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Proposals and contributions received from Governments

Addendum

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II. Proposals and contributions received from Governments

Australia: amendment to the revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime*

[Original: English]

Article 2: Definitions

Australia proposes the insertion in article 2 of a new subparagraph to follow subparagraph (c):

"(...) 'Deactivated firearm': a firearm that has been modified in accordance with the principles established in article 10 of this Protocol so that it cannot expel a shot, bullet, other missile or projectile and cannot be readily converted to do so."

Belgium**

[Original: French]

Article 4: Scope

The following new paragraph should be added:

"(...) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law shall not be governed by this Protocol."

Canada***

[Original: English]

Article 2: Definitions

The following amendment is proposed for subparagraph (d) of article 2:

"(d) 'Illicit manufacturing': the manufacturing or assembly of firearms and ammunition:

"(i) From components or parts illicitly trafficked;

"(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or

"(iii) Without marking the firearms at the time of manufacture."

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* Amendment previously issued in document A/AC.254/L.148.

** Amendment previously issued in document A/AC.254/5/Add.18.

*** Amendment previously issued in document A/AC.254/L.129.

China

[Original: Chinese and English]

A. Amendments previously issued in document A/AC.254/5/Add.18

Article 4: Scope

1. China proposes that article 4, on scope, should read as follows:

> "This Protocol applies to all classes of commercially traded and manufactured firearms, ammunition and other related materials but not to State-to-State transactions or transfers for purposes of national security or to firearms manufactured exclusively to equip a State Party's own army or security force."

Article 9: Marking of firearms

Paragraph 1 (a)

2. Manufacturers in China are obliged by law to put the appropriate marking on every firearm at the time of its production, regardless of what the firearm is destined to be used for (i.e. whether it is for military use or civilian use). However, markings may differ depending on what the firearms are to be used for. China is of the view that the criteria for determining what is an appropriate marking should be whatever enables the competent agency of a State Party to trace the source of the firearm. Therefore, it would be sufficient to require the marking to include the country of manufacture while leaving it to each State Party to decide what other information should be included in the marking. To make it more convenient to identify the country of manufacture, a universal system of country codes could be considered.

Paragraph 1 (b)

3. China does not require the marking of imported firearms. More consideration and discussion should be given to the provision in paragraph 1 (b) as it appears now. Bearing in mind the various practices in different countries concerning imported firearms, it might be sufficient for firearms to bear unique and identifiable markings that are recorded in full during the process of exporting and importing the firearms. Thus, paragraph 1 (a) of article 9, in combination with paragraph 1 (a) of article 8, could solve the problem of tracing imported firearms, thus relieving States Parties of the task of having to make changes in their current legislation and practices. In any case, the importing countries could decide whether to mark the imported firearms or not following their importation.

Article 10: Preventing the reactivating of deactivated firearms

4. China supports the idea of preventing the reactivating of deactivated firearms, but the provision in article 10 needs further clarification.

Article 11: General requirements for export, import and transit licensing or authorization systems

5. As for article 11, China has no particular difficulty with the requirements regarding export and import, but it has reservations with regard to transit licensing and retransfer authorization as the relevant provisions need to be clarified further. First and foremost, the

definition of "transit" itself needs further clarification. In the view of China, the requirement of transit licensing inevitably imposes a heavier burden on the transit country. Besides, whether it is the importer or the exporter who should apply for the transit licence is not clear in the current provision. The relationship between transit and trans-shipping also needs clarification.

6. With regard to the requirement for written approval from the exporting country prior to re-export or retransfer, China is of the view that how to dispose of the imported firearms is the sovereign right of the importing country because, in general, once goods are delivered to the importer, the right of ownership is passed on to the importer, who in turn is responsible for the disposition of the goods. End-user certification could help to prevent the re-export or retransfer of firearms without the approval of the exporting country.

Article 14: Exchange of information

Paragraph 1

7. In paragraph 1, China proposes to add the words "and taking into account their legitimate security or commercial concerns," after the words "applicable to them".

Article 17: Confidentiality

8. China proposes to modify the last sentence in article 17 to read as follows:

> "If for legal reasons such confidentiality cannot be maintained, the State Party that is to provide the information shall be notified prior to its provision of the information."

B. Position paper previously issued in document A/AC.254/L.137

9. China attaches importance to combating the illicit manufacturing of and trafficking in firearms and supports intensified cooperation by the international community in drafting a protocol on that subject within the framework of the negotiation of the draft United Nations Convention against Transnational Organized Crime. It has, therefore, actively participated in the work of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime in developing the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (the "Firearms Protocol").

10. Since the establishment of the Ad Hoc Committee, the various parties have, on a preliminary basis, exchanged their views on the framework and the various articles of the draft Firearms Protocol. China maintains that, pending further in-depth discussions, it is necessary for the Ad Hoc Committee to review several issues of fundamental importance concerning the draft Firearms Protocol so as to ensure that the Ad Hoc Committee moves in the right direction and proceeds smoothly in its work. Such issues include how to interpret the mandate of the Ad Hoc Committee in the relevant General Assembly resolutions, how to balance the relationship between the efforts in preventing and combating crime and the efforts in disarmament and arms control and how to straighten out the relationship between the control of legitimate manufacturing and transfer of firearms and the fight against illicit manufacturing of and trafficking in firearms.

I. The mandate of the Ad Hoc Committee in the relevant General Assembly resolutions

11. In its resolution 53/111 of 9 December 1998, entitled "Transnational organized crime", the General Assembly decided to establish an intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration, as appropriate, of international instruments on three issues, including combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. In its resolution 53/114 of 9 December 1998, entitled "Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity", the Assembly called upon the Ad Hoc Committee to devote attention to the drafting of the main text of the convention against transnational organized crime, as well as, as appropriate, of international instruments on the three issues, including combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

12. In its resolution 54/126 of 17 December 1999, entitled "Draft United Nations Convention against Transnational Organized Crime and the draft protocols thereto", the General Assembly requested the Ad Hoc Committee to continue its work in accordance with resolutions 53/111 and 53/114 and to intensify its work in order to complete it in 2000. In the same resolution, the Assembly requested the Ad Hoc Committee to schedule sufficient time for the negotiation of the three draft protocols to the Convention, including the draft Firearms Protocol, in order to enhance the possibility of their completion at the same time as the draft Convention.

13. Taking into account the above-mentioned resolutions, China maintains that the Firearms Protocol should be developed, within the framework of the negotiation of the draft United Nations Convention against Transnational Organized Crime, primarily to prevent and combat crime and that the purpose of the Firearms Protocol should be strictly confined to combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The above-mentioned General Assembly resolutions do not require Member States to restrict their legitimate manufacturing and transfer of firearms and still less to expand the scope of the definition of the term "firearms". Restricting the legitimate manufacturing and transfer of firearms is, in essence, an arms control issue. If the definition of the term "firearms" is expanded to cover landmines, missiles or other conventional weapons, a series of problems will arise in the development of the draft Firearms Protocol. Given that the terms "landmines" and "missiles" have their own definitions, to incorporate them into the definition of "firearms" would give rise to confusion regarding the concepts involved and would cause the Firearms Protocol to lose its focus. Moreover, there already exist international legal instruments that place restrictions on landmines and other weapons. To make different provisions within the framework of the Firearms Protocol would create confusion from a legal standpoint, making it difficult for the States Parties to implement the relevant provisions of the Protocol in the future.

14. In sum, developing the draft Firearms Protocol strictly in accordance with the mandate in the relevant General Assembly resolution is the key to success in the negotiation of the Protocol and will have a direct bearing on its universality.

II. The relationship between efforts aimed at preventing and combating crimes and efforts in arms control and disarmament

15. There are ongoing discussions on combating through arms control and disarmament the illicit transfer of small arms. The Group of Governmental Experts on Small Arms has submitted a report to the General Assembly at its fifty-fourth session (A/54/258). In addition, at its 1999 session, the Disarmament Commission adopted by consensus the guidelines on conventional arms control/limitation and disarmament, with particular emphasis on consolidation of peace in the context of General Assembly resolution 51/45 N.[1] The above-mentioned report and guidelines have, from an arms control and disarmament perspective, already covered some measures on small arms.

16. China is of the view that there are both similarities and differences between the above-mentioned efforts in arms control and disarmament and efforts in combating the illicit manufacturing of and trafficking in firearms for the purpose of preventing and combating crime. In both cases, the efforts are aimed at promoting security. The main difference lies in the fact that the efforts aimed at preventing and combating crimes are focused on safeguarding public security and combating criminal activities involving the illicit manufacturing of and trafficking in firearms so as to ensure the well-being of nations; however, the arms control and disarmament efforts are focused primarily on safeguarding the military security of each country, allowing the legal manufacture and transfer of arms to fulfil its legitimate defence needs. And the measures taken in the two fields are different in terms of their focus and priority.

17. In accordance with the mandate in the relevant General Assembly resolutions, the Ad Hoc Committee should confine its work on the draft Firearms Protocol to the area of preventing and combating crime in its drafting of each article of the Protocol. China is opposed to any attempt to go beyond the mandate of the Ad Hoc Committee and indiscriminately expand the scope of the definition of such basic concepts as firearms, as well as the scope of application of the Firearms Protocol, under the pretext of preventing and combating crime. Likewise, China is opposed to any attempt to turn the Protocol into a mechanism for controlling the manufacture, import, export or transfer of all conventional weapons other than heavy weapons.

III. The relationship between the control of the legitimate manufacturing and transfer of firearms and the fight against the illicit manufacturing of and trafficking in firearms

18. It is true that the control of the legitimate manufacturing and transfer of firearms is, to some extent, related to the fight against the illicit manufacturing of and trafficking in firearms and that appropriate management and regulation of the legitimate manufacturing and transfer of firearms are conducive to curbing and combating the illicit manufacturing of and trafficking in firearms. It is nevertheless undesirable to put the cart before the horse. If the Firearms Protocol includes undue restrictions on the legitimate manufacturing and transfer of firearms, it will not only go beyond the mandate in the relevant General Assembly resolutions, but it will also deviate from its original purposes. Should that be the case, it will not be possible to curb effectively the illicit activities targeted in the Protocol; at the same time, however, legitimate activities may, as a result, be affected, thus rendering the Protocol meaningless.

[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 42* (A/54/42), annex III.

19. Furthermore, each sovereign State should decide how to control or regulate the legitimate manufacturing and transfer of firearms on its territory. Given that conditions may vary from one country to another, the judiciary systems, laws and regulations may also vary from one country to another. Moreover, measures and systems suitable to one country or region may not be applicable to or effective in other countries or regions. Therefore, in developing the Protocol, it is, in principle, undesirable to introduce restrictions on the legitimate manufacturing and transfer of firearms in a country, and it is even less desirable to seek a common approach to be followed in each and every country or region.

IV. The deadline for the conclusion of the negotiations on the Firearms Protocol

20. In its resolution 54/126, the General Assembly requested the Ad Hoc Committee to intensify its work in order to complete it in 2000. However, given the gravity and complexity of the issue of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, China maintains that the Ad Hoc Committee should, in the first place, regard as its primary objective the drafting of a good, comprehensive protocol that can offer genuine solutions to problems. While striving to conclude its work on the Firearms Protocol at an early date, the Ad Hoc Committee should nevertheless attach more importance to the quality of the Protocol, so that, where possible, the concerns of the various parties may be addressed. Otherwise, the universality of the Firearms Protocol will be affected, even if it is possible to conclude a hasty agreement, as such a protocol will hardly be able to meet the concerns of the various parties. That, in the view of China, would not be conducive to strengthening cooperation among States in combating illicit manufacturing of and trafficking in firearms, thus making it difficult to achieve the original objective of the Firearms Protocol.

21. The delegation of China is ready to cooperate actively and to work together with all other delegations in a common effort to enable the Ad Hoc Committee to conclude early its work on a protocol that will meet the concerns of all parties.

Colombia*

[Original: English]

Preamble

1. It is proposed that a new paragraph be added to read as follows:

> "(...) *Convinced* that the illicit international trade in firearms, their parts and components, ammunition, explosives and other related materials constitutes a specific risk to the security and well-being of States Parties and that measures to promote further cooperation among States Parties, in particular by the promotion of harmonized controls over the legal import and export of firearms, their parts and components, ammunition, explosives and other related materials and of procedures for applying them, will assist in preventing and eradicating such illicit trade."

Article 2: Definitions

2. The following new subparagraph should be added:

* Amendments previously issued in document A/AC.254/5/Add.18.

"(...) 'In-transit country' shall mean the country through which a shipment is moved, which is neither the country of origin nor the country of final destination."

Article 3: Purpose

3. The following new subparagraph should be added:

"(...) To set out harmonized measures and procedures for monitoring and controlling the international movement of firearms, parts and components, ammunition, explosives and other related materials, in order to prevent their illicit trafficking and diversion for illegal uses and purposes."

Article 4: Scope

4. The following new option should be added:

"Option ...

"This Protocol shall apply in national jurisdictions, free-trade zones, free ports and other customs divisions."

Article 5: Criminalization

5. The following new subparagraphs should be added to paragraph 1:

"(...) The purchase or possession of illicitly manufactured or trafficked firearms, their parts and components, ammunition, explosives and other related materials;

"(...) The organization, management or financing of the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials."

6. Paragraph 2 should be amended to read as follows:

"2. The participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this Protocol shall also be considered criminal offences."

7. Paragraph 3 should be amended to read as follows:

"3. Each State Party shall make the person or persons who commit any of the offences established in accordance with this Protocol subject to criminal sanctions that take into account the grave nature of the offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation. This provision should be interpreted without prejudice to the administrative, civil and other forms of sanctions that may apply."

8. The following new paragraphs should be added:

"(...) States Parties shall ensure that their courts and other competent authorities having jurisdiction over the offenders under this Protocol take into account, when prosecuting such offenders, factual circumstances that make the commission of offences established in accordance with this Protocol particularly serious, such as:

"(a) Involvement in the offence of an organized criminal group to which the offender belongs;

"(b) Involvement of the offender in other international organized criminal activities;

"(c) Involvement of the offender in other illegal activities facilitated by the commission of the offence;

"(d) The violent use of illicitly trafficked arms and explosives by the offender;

"(e) The fact that the offender holds a public office, whether or not the offence is connected with the office in question;

"(f) The use of minors in the commission of an offence listed in this article.

"(...) States Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences established in accordance with this Protocol and the circumstances described in article 5, paragraph 4, of this Protocol when considering the sanctions to be imposed on the offender.

"(...) Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of the legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law."

Article 8: Record-keeping

9. Replace paragraphs 1 and 2 with the following:

"1. Each State Party shall maintain its own records of import, export and in-transit shipments of firearms, their parts and components, ammunition, explosives and other related materials, recording, classifying and describing the actual quantities and [proceeding] involved in each shipment transaction. In the case of export and import transactions, records shall be maintained by the appropriate authorities that reflect the quantities of firearms, their parts and components, ammunition, explosives and other related materials remaining to be exported or imported, as the case may be, based on the corresponding certificates.

"2. Records shall be kept for a period of not less than five years after the last transaction effected under the corresponding certificate, to enable each State Party to trace and identify illicitly manufactured and trafficked firearms, their parts and components, ammunition, explosives and other related materials. States Parties shall identify to one another the authority responsible for record-keeping."

10. The following new paragraph should be added:

"(...) States Parties that already possess computerized information systems and the associated technical competence and expertise shall agree to share that technology and knowledge with interested participating States Parties, in order to facilitate and harmonize record-keeping and information-sharing."

Article 9: Marking of firearms

11. The title of article 9 should read "Marking of firearms, ammunition and explosives".

12. The following new subparagraphs should be added to paragraph 1:

"(...) Require appropriate markings to be applied to ammunition, by head-stamping or embossing on the base of each cartridge case during the manufacturing process numbers, letters, trademarks, symbols or other codes used to identify the country or factory of origin, the year of production, the lot number and the calibre;

"(...) Require appropriate markings on the packaging of ammunition and explosives (military explosives, commercial explosives and their associated accessories, including detonators and blasting caps), including detailed information about their designation, nature, calibre, type, manufacturer, year and lot of manufacture, as well as other codes associated with transport and storage safety."

Article 11: General requirements for export, import and transit licensing or authorization systems

13. The following new paragraphs should be added:

"(...) Pursuant to article 3, subparagraph (c), of this Protocol, harmonized measures and procedures for monitoring and controlling the international movement of firearms, their parts and components, ammunition, explosives and other related materials include the following documentation:

"(a) Export certificates. An export certificate shall accompany each shipment. Each export certificate shall contain at a minimum the information required by all States, as outlined in the annex to this Protocol;

"(b) Export attachment. The export attachment shall contain information required by all States, with the serial numbers of the firearms, their parts and components, ammunition, explosives and other related materials being shipped, within each classification and description (according to the bill of lading), the date of shipment, the exit port and the routes planned, and specifying all shipping modes and shippers, as outlined in the annex to this Protocol;

"(c) Import certificate. An import certificate shall be given to an applicant who meets the applicable domestic legal requirements and provides the applicable information. The import certificate shall contain at a minimum the information required by all States, as outlined in the annex to this Protocol;

"(d) In-transit shipment authorization. The competent authority of an in-transit country shall issue an in-transit shipment authorization to an applicant who meets the pertinent domestic legal requirements, who provides the information required and who supplies an original or a certified copy of the import certificate issued by the country of final destination and an original or a certified copy of the export certificate and export attachment, as described in article 5 of this Protocol and outlined in the annex to this Protocol;

"(e) Verifying competent authority. Where applicable, the importing country shall release the shipment to the person who satisfies the competent authority that he or she is the authorized representative identified on the import certificate, upon confirming that the contents of the shipment and the identity of the importer or final recipient are in accordance with the information specified in the import certificate, export certificate and export attachment, and that the importer or final recipient meets the applicable domestic requirements.

"(...) The following general conditions shall apply to all certificates, attachments and authorizations:

"(a) *Validity period for import certificates, export certificates and attachments and in-transit shipment authorization*. Each import certificate shall specify an expiry date (generally considered to be one year from the date of issue). Each export certificate and export attachment and in-transit shipment authorization shall specify a maximum validity period that shall not extend beyond the expiry date of the import certificate;

"(b) *No extension of the validity period*. The validity period of all certificates, attachments and authorizations granted shall not be extended. Upon expiry of the validity period of a certificate, attachment or authorization, a new application must be submitted;

"(c) *Authorized quantities*. All import certificates, export certificates or attachments, or in-transit shipment authorizations shall indicate the authorized quantities of each type of firearm, parts and components or ammunition and explosives, as the case may be, duly identified by its applicable form of classification and description, that may be shipped pursuant to those documents;

"(d) *Authenticity of certificates and other documents*. To ensure the authenticity of all certificates, attachments and authorizations and any other documentation required to be submitted to authorities under these regulations, only original and certified copies shall be accepted or, if agreed to by the competent authorities of the countries concerned, the documentation may be transmitted by electronic means;

"(e) *Modification of certificates and other documents*. The modification of certificates, attachments and authorizations shall only be permitted to be made by the competent authority within the validity period and with respect to the following matters:

"(i) For all certificates: the country of origin of firearms, their parts and components, ammunition, explosives and other related materials for export;

"(ii) For export attachments and in-transit shipment authorizations: planned shipment information, shipping routes, ports of entry and exit, modes of shipment, shipping dates and shippers for individual shipments;

"(iii) All changes except [...] shall require authentication, such as stamps, seals and authorized signatures, on the front side of the modified certificates or other documents.

"(...) The steps to be followed for the exportation of firearms, their parts and components, ammunition, explosives and other related materials are:

"(a) The competent authority of the country of export may issue an export certificate to an applicant who:

"(i) Meets the applicable domestic legal requirements;

"(ii) Provides the applicable information outlined in the annex to this Protocol; and

"(iii) Supplies the original or a certified copy of the import certificate referred to in article [5] of this Protocol;

"(b) The competent authority shall only authorize the export of firearms, their parts and components, ammunition, explosives and other related materials pursuant to an export certificate when the applicant provides to the competent authority the export attachment information outlined in the annex to this Protocol. The export attachment information may be provided on a portion of the export certificate or on an export attachment;

"(c) Where the firearms, their parts and components, ammunition, explosives and other related materials are to pass through an in-transit country or countries before reaching the country of final destination, the exporter shall also provide to the verifying agency of the country of export an in-transit shipment authorization from each in-transit country;

"(d) The competent authority shall send the original or a certified copy of the export certificate and export attachment, including the information outlined in the annex to this Protocol, to the verifying agency of the importing country and, where applicable, to the competent authority of each in-transit country;

"(e) The shipper identified by the exporter on the export attachment shall present the firearms, their parts and components, ammunition, explosives and other related materials, together with the original or a certified copy of the export certificate and export attachment, to the verifying agency of the exporting country and, upon verification by the latter, the shipment may be exported.

"(...) The steps to be followed for the importation of firearms, their parts and components, ammunition, explosives and other related materials are:

"(a) The competent authority of the importing country may issue an import certificate to an applicant who meets the applicable domestic legal requirements and who provides the applicable information outlined in the annex to this Protocol;

"(b) The importer shall provide an original or certified copy of the import certificate to the exporter for presentation to the competent authority of the country of export, as required under article [5] of this Protocol;

"(c) The verifying agency of the importing country, upon confirming that the contents of the shipment and the identity of the importer or final recipient are in accordance with the information specified in the import certificate, export certificate and export attachment, and that the importer or final recipient meets the applicable domestic requirements, shall release the shipment to the person who satisfies the verifying agency that he or she is the authorized representative identified on the import certificate.

"(...) Steps to be followed for an in-transit shipment are:

"(a) The competent authority of an in-transit country may issue an in-transit shipment authorization to an applicant who meets the applicable domestic legal requirements, who provides the information outlined in the annex to this Protocol and who supplies the following documents:

"(i) An original or a certified copy of the import certificate issued by the country of final destination; and

"(ii) An original or a certified copy of the export certificate and export attachment described in this article;

"(b) The recipient of the in-transit shipment authorization shall provide an original or certified copy of the authorization to the exporter for presentation to the verifying agency of the country of export, as required under this article;

"(c) The verifying agency of the in-transit country, upon confirming that the contents of the shipment and the identity of the shipper are in accordance with the information specified in the import certificate, export certificate, export attachment and in-transit authorization and that domestic legal requirements have been met, shall permit the in-transit passage of the shipment."

Article 14: Exchange of information

14. The following new paragraphs should be added:

"(...) Each State Party shall designate a central information office to receive and fulfil information requests from participating countries concerning import, export and in-transit shipment transactions of firearms, their parts and components, ammunition, explosives and other related materials. Where the information is required for judicial proceedings, it shall be provided on a basis consistent with existing agreements for such purpose.

"(...) Information on all known aspects of activities relating to the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials shall be provided to and collected by the International Criminal Police Organization for access by participating countries. If possible, States Parties shall make this information available in electronic form to facilitate the tracing and confiscation of the weapons and the capture of the offender."

Article 15: Cooperation

15. The following new paragraph should be added:

"(...) For the purpose of cooperation among States Parties to this Protocol, including, in particular, cooperation under article 9 of this Protocol, offences established in accordance with article 5, paragraph 1, of this Protocol shall not be considered fiscal offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic laws of the States Parties."

Article 18 bis: Registration and licensing of brokers

16. The title of article 18 *bis* should be amended to read "Registration and licensing of brokers, retailers and transportation agents".

17. The text of the article should be replaced with the following:

"To prevent and combat the illicit manufacturing of and illicit trafficking in firearms, their parts and components, ammunition, explosives and other related materials, each State Party shall regulate and monitor, when applicable, legitimate commercial activities by licensing and registering all persons of its nationality who engage in such transactions, such as:

"(a) Retailers and wholesalers who buy and sell firearms, their parts and components, ammunition, explosives and other related materials;

"(b) Brokers who arrange such transactions (that is, persons who gain material benefit from financing or facilitating such transactions);

"(c) Transportation agents who arrange for the delivery of such goods (that is, persons who ensure the transportation of the goods so that the transactions may be completed)."

Annex

18. The following annex should be added:

"Annex

"1. All import certificates, export certificates or attachments or in-transit shipment authorizations shall indicate the authorized quantity of each type of firearm, parts and components, ammunition, explosives and other related materials (listed by classification and description) that may be shipped pursuant to those documents, as outlined in this annex.

"Export certificates

"2. Each export certificate shall contain the following information:

"(a) Domestic export certificate: identified by the country of issuance;

"(b) Country of issuance: identified by name or by a unique country code;

"(c) Date of issuance: in international date format;

"(d) Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing office's name and signature;

"(e) Exporter identification: the exporter's name, address, telephone number and facsimile number and the representative's name (if the exporter is a commercial body) and signature;

"(f) Exportation authorization: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for export, listed by classification and description;

"(g) Certificate expiry date: date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be shipped pursuant to the export certificate or the date of expiry of the certificate, whichever is earlier;

"(h) Importing country information (domestic import certificate): the name of the country of issuance, the date of issuance of the certificate, the competent authority, the importer and final recipient, the authorized quantity of firearms, their parts and components, or ammunition and explosives, and other related materials to be imported and the certified expiry date;

"(i) Importer identification: the importer's name, address, country code of residence and citizenship (if the importer is an individual) and the representative's name (if the importer is a commercial or government body);

"(j) Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, country code of residence and citizenship if the final recipient is an individual and the representative's name if the final recipient is a commercial or government body;

"(k) Country of origin of the firearms, parts and components, ammunition, explosives and other related materials: the name or unique country code;

"(l) Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile number, the signing officer's name and signature, the quantity of firearms, parts and components, ammunition, explosives and other related materials (listed by classification and description) shipped to date pursuant to the export certificate;

"(m) Additional descriptive information concerning the firearms, parts and components that is required in some countries, such as barrel length, overall length, action, the number of shots, the manufacturer's name and the country of manufacture.

"Export attachments

"3. Each export attachment shall contain the following information:

"(a) Shipment information: the serial numbers of the firearms, parts and components, ammunition, explosives and other related materials (where applicable) being shipped, listed by classification and description (according to the bill of lading), the date of shipment, the exit port and the routes planned, specifying all shipping modes and shippers;

"(b) For each shipper identified above: the shipper's name, address, telephone number and facsimile number, and the representative's name and signature (if the shipper is a commercial or government body);

"(c) Information on prior shipments, if any, made against the export certificate and the dates of exit of previous shipments: the quantity of the firearms, parts and components, ammunition, explosives and other related materials involved (listed by classification and description) in each shipment, the cumulative quantity of all shipments sent prior to this shipment and the shipper's name.

"Import certificates

"4. Each import certificate shall contain the following information:

"(a) Domestic import certificate: identified by the country of issuance;

"(b) Country of issuance: identified by name or by a unique country code;

"(c) Date of issuance: in international date format;

"(d) Competent authority identification: the competent authority's name, address, telephone number and facsimile number and the signing officer's name and signature;

"(e) Importer identification: the importer's name, address, telephone number, facsimile number and country of residence and, if the importer is a commercial or government body, the representative's name, citizenship and signature;

"(f) Final recipient identification (if the final recipient is different from the importer): the final recipient's name, address, telephone number, facsimile number and country of residence and, if the final recipient is a commercial or government body, the representative's name, citizenship and signature;

"(g) Importation authorized: the total quantity of firearms, parts and components, ammunition, explosives and other related materials approved for import, listed by classification and description;

"(h) Certificate expiry date: the date by which total quantity of firearms, parts and components, ammunition, explosives and other related materials must be imported pursuant to the import certificate or the date of expiry of the certificate, whichever is earlier;

"(i) Export country information: the name of the country of export;

"(j) Certificate cancellation (applicable when certificates are cancelled): the date, the competent authority's address, telephone number and facsimile number, the signing officer's name and signature, the quantity of firearms, parts and components, ammunition, explosives and other related materials (listed by classification and description) received to date pursuant to the import certificate;

"(k) Additional descriptive information concerning the firearms or parts and components: barrel length, overall length, the number of shots, the manufacturer's name and the country of manufacture.

"In-transit shipment authorizations

"5. Each in-transit shipment authorization shall contain the following information:

"(a) Country information: domestic in-transit authorization identifier; the country of issuance, identified by name or by a unique country code; the date of issuance; and competent authority identification, including the competent authority's name, address, telephone number and facsimile number;

"(b) Identification of the applicant: the applicant's name, address, country of residence, telephone number and facsimile number and the representative's name and signature if the applicant is a commercial or government body;

"(c) Authorization of the in-transit shipment: for each country, the in-transit shipment requirements of the competent authority including the authorized ports of entry and exit; expiry dates pertaining to authorization; any other specific information concerning the shipment while in that country, such as the periods during which the shipment is anticipated to be in bond and the anticipated location of the shipment while in bond; any restrictions or conditions imposed by the competent authority; and the authorizing officer's signature and seal."

Italy*

[Original: English]

Article 1: Relationship with the United Nations Convention against Transnational Organized Crime

1. Paragraph 2 should be deleted.

Article 2: Definitions

2. With reference to comments made by a number of delegations, the Italian delegation would like to present the following proposal related to the reformulation of the definition of "tracing" that appears in subparagraph (f) *bis* of article 2:

> "(f) *bis* 'Tracing': the systematic tracking of firearms [and ammunition] from manufacturer to purchaser for the purpose of assisting law enforcement authorities of States Parties [and relevant intergovernmental organizations] in analysing and monitoring illicit trafficking, as well as aiding competent national authorities in identifying suspects involved in criminal violations."

Article 3: Purpose

3. The text of article 3 should be replaced with the following:

> "Bearing in mind the illegal activities carried out by criminal organizations in the area of illicit manufacturing of and trafficking in firearms as well as their use for the purpose of facilitating the unlawful enterprises of those organizations, the purpose of this Protocol is to promote and facilitate cooperation, including the exchange of information, experience and expertise, among States Parties and relevant intergovernmental organizations, in order to prevent, combat, eradicate and prosecute the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition."

Japan**

[Original: English]

Article 2: Definitions

1. It is proposed to amend subparagraphs (d) and (f) of article 2 to read as follows:

> "(d) 'Illicit manufacturing': the manufacturing or assembly of firearms and ammunition:
>
> "(i) From components or parts illicitly trafficked;
>
> "(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or
>
> "(iii) Without marking the firearms at the time of manufacture;
>
> "(e) ...

* Amendments previously issued in document A/AC.254/5/Add.18.
** Amendments previously issued in document A/AC.254/5/Add.18.

"(f) 'Parts and components': any essential element or replacement element of a firearm, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, including any device designed or adapted to diminish the sound caused by firing the firearm."

Article 4: Scope

2. It is proposed to amend article 4 to read as follows:

"This Protocol applies to firearms, their parts and components and ammunition, but not to State-to-State transactions or transfers for the purpose of national security."

Article 6: Jurisdiction

3. It is proposed to amend article 6 to read as follows:

"Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in article 5 of this Protocol. Article 9 of the Convention shall apply *mutatis mutandis* to the offences established pursuant to this Protocol."

Article 7: Confiscation or forfeiture

4. It is proposed to amend article 7 to read as follows:

"States Parties shall adopt such measures as may be necessary to enable the confiscation or forfeit of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked. Article 7 of the Convention shall apply *mutatis mutandis* to this Protocol."

Article 8: Record-keeping

5. It is proposed to amend article 8 to read as follows:

"Each State Party shall ensure the maintenance for not less than ten years of information in relation to firearms necessary to trace and identify those which are illicitly manufactured and trafficked and to prevent and detect such activities. The information shall include:

"(a) The appropriate marking applied at the time of manufacture;

"(b) In cases involving international transactions, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries where appropriate and the final recipient, description and quantity of the articles."

Malawi and Swaziland

[Original: English]

Article 2: Definitions

Malawi and Swaziland propose the insertion in article 2 of a new subparagraph to read as follows:

"(...) 'Broker': brokering shall mean acting:

(i) For a commission, advantage or cause, whether pecuniary or otherwise;

(ii) To facilitate transfer, documentation, and/or payment in respect of any transaction relating to the buying or selling of firearms, their parts and components and ammunition; and

Thereby acting as intermediary between any manufacture or supplier of or dealer in firearms, their parts and components and ammunition and any buyer or recipient thereof."

Mexico

[Original: English]

A. Amendment previously issued in document A/AC.254/5/Add.18.

Article 3: Purpose

1. It is proposed to amend article 3 to read as follows:

"The purpose of this Protocol is:

"(a) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;

"(b) To promote and facilitate cooperation and the exchange of information and experience among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials."

B. Further amendment

Article 17: Confidentiality

2. Mexico proposes the following amended text of article 17:

"States parties shall guarantee the confidentiality of any information that it receives from another State Party, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information, unless the State Party concerned has previously informed the State Party providing the information about the possibility that it may be unable to fulfil this obligation pursuant to its domestic legislation. If such confidentiality cannot be maintained, the State Party that provided that information shall be notified prior to its disclosure."

Norway*

[Original: English]

Article 5: Criminalization

The following new subparagraphs should be added to paragraph 1:

* Amendment previously issued in document A/AC.254/L.142.

"(...) Intentionally providing false, misleading, incomplete or otherwise incorrect information in licensing or authorization documents;

"(...) Intentionally making, procuring or providing fraudulent licensing or authorization documents agreed upon in this Protocol; and

"(...) Knowing that licensing or authorization documents are fraudulent:

"(i) Using, dealing with or acting on such documents; and

"(ii) Causing such fraudulent documents to be used, dealt with or acted on."

Syrian Arab Republic*

[Original: Arabic]

Title

1. The Syrian Arab Republic supports the proposal by Japan (A/AC.254/L.22, paras. 5 and 6), in which it is stated that the title of the Protocol should read "Protocol to Combat the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials supplementary to the United Nations Convention against Transnational Organized Crime", so that the wording would be more in line with Economic and Social Council resolution 1998/18 of 28 July 1998, on measures to regulate firearms, and General Assembly resolution 53/111 of 9 December 1998, on transnational organized crime.

2. The same wording should be used in the text of the draft Protocol (in the places indicated by Japan in the annex to its proposal (A/AC.254/L.22, annex)), so that the wording of the draft Protocol is consistent with that of the above-mentioned resolutions.

Preamble

New preambular paragraph

3. A new preambular paragraph should be added before preambular paragraph (a), the text of which should read as follows:

"*Taking note* of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as 'the Convention'),"

Preambular paragraph (a)

4. Option 2 should be adopted.

Preambular paragraph (b)

5. Option 2 should be adopted.

Preambular paragraph (c)

6. Option 1 should be adopted.

* Amendments previously issued in document A/AC.254/L.133.

Preambular paragraph (c) bis

7. Preambular paragraph (c) *bis*, proposed by the delegation of Mexico, should be deleted.

Preambular paragraph (d)

8. Option 1 should be adopted.

Preambular paragraph (f) bis

9. Preambular paragraph (f) *bis* should be adopted as an alternative to preambular paragraphs (e) and (f).

Preambular paragraph (g)

10. Preambular paragraph (g) should be deleted because preambular paragraph (f) *bis* is sufficient.

Preambular paragraph (h)

11. Option 2 should be adopted.

Preambular paragraph (i)

12. Option 2 should be adopted.

New preambular paragraph

13. The following new preambular paragraph should be added:

> "*Desiring to* supplement the Convention by a protocol designed to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,"

Article 1: Relationship with the United Nations Convention against Transnational Organized Crime

14. The text of article 1 should be amended to read "The provisions of articles [...] of the Convention, done at [...], shall also apply mutatis mutandis to this Protocol", thereby bringing that article in line with the text of article 1, option 2, of the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (the "Migrants Protocol" (A/AC.254/4/Add.1/Rev.2)).

Paragraph 2

15. Paragraph 2 should be moved to article 3.

Article 2: Definitions

16. The proposal that the definitions in article 2 should be in a logical order rather than in alphabetical order (footnote 32) should be adopted.

Paragraph (a)

17. The words in brackets should be deleted.

Paragraph (b)

18. The brackets should be removed.

Paragraph (c)

19. Option 2 should be adopted.

20. The word "lethal" should be replaced with the word "portable".

21. The words "propelled by action of an explosive material" should be added after the word "missile".

22. The words "and replicas of such firearms" should be added after the words "antique firearms".

Paragraph (d)

23. The word "explosives" in brackets should be deleted.

24. In subparagraph (d) (ii), option 1 should be adopted.

Paragraph (e)

25. The word "explosives" in brackets should be deleted from subparagraph (e) (i).

Paragraph (f)

26. The brackets in subparagraphs (e) (ii) and (l) (iii) should be removed.

27. Option 2 should be adopted and the text of paragraph (f) should be amended to read as follows:

> "(f) 'Parts and component'. any components of a firearm that are essential to its operation, such as a barrel (cylinder), frame or slide."

Paragraph (f) ter

28. Paragraph (f) ter should be deleted.

Article 3: Purpose

Subparagraph (a)

29. Subparagraph (a) should be deleted.

Subparagraph (b)

30. Option 2 should be adopted and the following words should be added to the end of the text: "in the context of transnational organized crime".

Article 4: Scope

31. The title of article 4 should be amended to read "Scope of application".

32. Option 4 should be adopted.

Article 4 bis: Sovereignty

Paragraph 1

33. Paragraph 1 should be moved to the end of the draft Protocol.

Paragraph 2

34. Paragraph 2 should be moved to article 6 (Jurisdiction).

Article 5: Criminalization

Paragraph 1

35. The word "and" in brackets should be deleted and the word "criminal" in brackets should be deleted.

36. The remaining brackets should be removed.

37. In line with article 4, paragraph 1, option 1, of the Migrants Protocol (A/AC.254/4/Add.1/Rev.2), the phrase "in connection with a criminal organization" should be amended to read "in the context of transnational organized crime, as defined in the Convention".

38. Subparagraph (c) should be deleted since it deals with matters other than illicit manufacturing and trafficking—matters that extend beyond the scope of the draft Protocol.

39. The order of subparagraphs (a) and (b) should be reversed.

Paragraph 2

40. The brackets should be removed.

Paragraph 3

41. Paragraph 3 should be deleted since its cope extends beyond individuals to include States, in addition to the fact that it deals with matters other than illicit manufacturing or trafficking.

Article 6: Jurisdiction

42. Option 1 should be adopted, thereby bringing article 6 in line with the provision contained in article 6 of the Migrants Protocol (A/AC.254/4/Add.1/Rev.2).

Article 7: Confiscation or forfeiture

43. The words "or forfeiture" in the title should be deleted.

Paragraph 1

44. The words in brackets should be deleted.

Paragraph 2

45. Paragraph 2 should be redrafted to read as follows: "States Parties shall dispose of the confiscated firearms and ammunition in accordance with their respective national laws".

Article 8: Record-keeping

Paragraph 1

46. The brackets should be removed.

Paragraph 2

47. The first sentence in brackets, which reads "Records shall be kept for a period of not less than [ten] years after the last transaction effected under a [particular certificate]", should be deleted.

48. The brackets should be removed from the second sentence.

Paragraph 3

49. Option 2 should be adopted.

Article 9: Marking of firearms

Paragraph 1

50. The brackets should be removed.

51. In subparagraph (a), the words "and year" should be added after the word "place" and the brackets should be removed. In subparagraph (b), the brackets should be removed. In subparagraph (c), the brackets should also be removed.

Paragraph 1 bis

52. The brackets should be removed.

Article 11: General requirements for export, import and transit licensing or authorization systems

Paragraph 2

53. Option 2 should be adopted.

Paragraph 3

54. Option 1 should be adopted.

Paragraph 5

55. Paragraph 5 should be deleted.

Article 12: Security measures

56. The brackets should be removed.

Article 15: Cooperation

Paragraph 2

57. The bracketed words "on matters relating to this Protocol" should be retained.

Paragraph 3

58. The brackets should be removed.

Article 15 bis: Establishment of a focal point

59. Article 15 *bis* should be deleted in order to avoid duplication, the focal points having been mentioned in article 15.

Article 16: Exchange of experiences and training

Paragraph 2

60. The phrase in brackets should be deleted.

Article 17: Confidentiality

61. Option 1 should be adopted and the brackets should be removed from the words ", other law". The second phrase in brackets should be deleted.

Article 18 bis: Registration and licensing of brokers

62. The title of this article should be changed to "Licensing by brokerage".

63. The words "natural or judicial" should be added before the word "person".

64. The brackets should be removed from the words "and ammunition".

65. The words "wherever located" should be deleted.

66. The words "to register with and receive approval from his or her country of nationality" should be replaced with the words "to obtain a licence to engage in that activity from his or her country of residence".

United Kingdom of Great Britain and Northern Ireland and United States of America*

[Original: English]

Article 2

It is proposed to amend subparagraph (f) of article 2 to read as follows:

"(f) 'Parts and components': any essential element or replacement element of a firearm, including a barrel, frame or receiver, slide or cylinder, bolt or breech block and also including any device designed or adapted to diminish the sound caused by firing the firearm."

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* Amendments previously issued in document A/AC.254/5/Add.18.